

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ACCEPTANCE CASUALTY
INSURANCE COMPANY,

Plaintiff,

v.

MRVK HOSPITALITY GROUP
LIMITED LIABILITY COMPANY,

Defendant.

No. 1:21-cv-01359-ADA-EPG

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN FULL

(ECF No. 29.)

This case concerns an insurance coverage dispute over whether Plaintiff Acceptance Casualty Insurance Company (Plaintiff) has a duty to defend a state court lawsuit alleging that Defendant MRVK Hospitality Group Limited Liability Company (Defendant) is liable for injuries that two people sustained from a shooting occurring on its property. The Plaintiff filed the complaint on September 9, 2021. (ECF No. 1.) On January 26, 2022, the Plaintiff filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). (ECF No. 18.) Thereon, the Plaintiff sought a declaration that it had no duty to defend Defendant because the policy excludes coverage for claims arising out of assault and/or battery. (*Id.*) Additionally, Defendant sought a declaration that it was entitled to reimbursement for defense costs that it had paid in the state court case. (*Id.*)

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1 On February 15, 2022, the Defendant filed its opposition to Plaintiff's motion for
2 judgment on the pleadings. (ECF No. 22.) In support of its opposition, Defendant included a
3 request for judicial notice of two California Department of Insurance licensing records. (ECF No.
4 22-1.) On September 12, 2022, the matter was referred to a United States Magistrate Judge
5 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. (ECF No. 27.)

6 On December 6, 2022, the assigned Magistrate Judge entered findings and
7 recommendations, recommending that Plaintiff's motion for judgment on the pleadings be
8 granted and that Defendant's request for judicial notice be denied. (ECF No. 29.) The findings
9 and recommendations permitted the parties to file objections within fourteen days; however, the
10 Magistrate Judge later extended the time to file objections to February 17, 2023. (ECF No. 36.)
11 On February 17, 2023, Defendant filed a notice of non-objection to the Magistrate Judge's
12 findings and recommendations stating "that it does not object to the Magistrate's 'Findings and
13 Recommendations to Grant Plaintiff's Motion for Judgment on the Pleadings and Deny
14 Defendant's Request for Judicial Notice' nor to entry of an Order granting the motion on that
15 basis." (ECF No. 37 at 2.)

16 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
17 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
18 Court finds the findings and recommendations to be supported by the record and proper analysis.

19 Accordingly,

- 20 1. The findings and recommendations issued on December 6, 2022, (ECF No. 29),
21 are ADOPTED IN FULL;
- 22 2. Plaintiff's motion for judgment on the pleadings, (ECF No. 18), is GRANTED;
- 23 3. The Court declares as follows:
 - 24 a. Defendant is not entitled to coverage, including defense and/or indemnity, in
25 connection with the underlying Stanislaus County Superior Court (Case
26 Number CV-19-006990);

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b. Plaintiff is entitled to reimbursement for the defense costs paid in connection with the underlying Stanislaus County Superior Court (Case Number CV-19-006990);

4. Defendant's request for judicial notice, (ECF No. 22-1), is DENIED; and

5. This matter is referred back to the assigned Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: June 5, 2023


UNITED STATES DISTRICT JUDGE